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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.B. et al., Persons Coming Under the
Juvenile Court Law.

B205592
(Los Angeles County
Super. Ct. No. CK68108)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LORI T.,

Defendant;

JUDITH B.,

Petitioner and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite Downing, Judge. Affirmed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Petitioner and Appellant.

Lori Siegel, under appointment by the Court of Appeal, for Minors and Appellants K.B. and C.B.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Timothy M. O’Crowley, Senior Deputy County Counsel, for Plaintiff and Respondent.

Judith B. appeals from the orders of the juvenile court denying her motion for presumed parent status with respect to minors K.B., C.B., J.B., and T.B.; denying her application for de facto parent status; and removing her court appointed attorney. Minors K.B. and C.B. appeal the denial of presumed parent status to Judith B., and each appellant joins in the arguments of the others. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Background, DCFS Intervention and Early Investigation

Lori T. gave birth to K.B. in May 1993, J.B. in June 1995, C.B. in June 1996, and T.B. in February 1998. The children were raised by Judith B. and Royce B.¹ whose now-deceased adopted son was sometimes said to be the biological father of J.B. The children came to the attention of the Department of Children and Family Services (DCFS) in May 2007 when they were involved in two motor vehicle collisions. It was alleged that Royce B. hit one car, fled, then hit another car. When law enforcement officers investigated, they found that the B's and the children appeared to be living in their vehicle and that it was in unsanitary condition. The police officer who investigated reported that there were four children and a disabled adult² in the truck, and that there were feces and a strong odor in the vehicle. The children were described by DCFS as very dirty and unkempt.

¹ For simplicity we will refer to Judith B. and Royce B. together as the B's. Royce B. also appealed the orders of the juvenile court but he passed away during the pendency of the appeal.

² The disabled adult was Patty B. Judith reported that she had been caring for Patty B. since she found her left for dead in a motel. She stated that Patty B. is mentally retarded.

The children were detained and placed in foster care. Statements were taken from the children when they were detained. The oldest child, 13-year-old K.B., reported that they had been living in California for three years, sometimes driving back to Tennessee. They went to school in Tennessee and had gone to school in California. She stated that on the day DCFS became involved with the matter, they had not eaten in “maybe a couple of days.” She reported that they usually ate fast food. K.B. told the social worker that the children did not often take baths and she did not know when she had last had one, that sometimes they just changed their clothes. She said she did not know when she had last gone to a doctor or a dentist. She reported that she felt safe with “her parents,” and that they did not hit her. Similar accounts were given by J.B. and T.B. The children had not been to school in at least one month. Early reports from foster care indicated that the children seemed to be very attached to Judith B. and Royce B. and to refer to them as “Mom” and “Dad.”

Judith B. reported at the time of detention that she had recently had a stroke and was having difficulty recovering. The children had no medical problems and their shots were current; all had been born drug addicted and C.B. was mentally retarded. She said that the children were going to school and that they ate, but just not that day. She attributed the children’s unclean state to the fact that they had been camping. She reported receiving no assistance for the children and that the family lived on Patty B.’s Supplemental Security Income checks and Royce B.’s retirement funds. She stated that the family was having difficulty finding a place to live that they could afford. She explained that the feces in the car came from Patty B., who had to use the bathroom before they could reach one due to the car accidents and investigation.

Initially in the dependency court, the B’s were thought to be the children’s legal guardians. At the detention hearing in May 2007, counsel was appointed for them.

II. Summer 2007: Further Court Proceedings, New Allegations

By the time of the pretrial resolution conference in June 2007, DCFS had discovered that it did not appear that the B's had ever obtained a legal guardianship over the children. Moreover, it appeared that the family had previous contacts with Nevada's Child Protective Services which had been prompted by similar living circumstances. In May of 2006 the family had come to the attention of that agency on allegations of a filthy home, lack of necessities, lack of supervision, and physical neglect. The family had been found sleeping in their truck late at night with the conditions in the truck described as filthy and smelling of feces and urine. The allegations were determined to be unsubstantiated and the children returned home on the condition that the B's obtain permanent legal guardianship over the children.

Judith B. and Royce B. produced notarized documents from 2000 in which Lori T. had consented to a guardianship of the four children. In those documents, Lori T. stated that the B's "have had total physical custody of the children and have provided sole financial support for their care since each of their births." She consented to the children living with the B's and authorized them to make decisions about the children's medical treatment; their educational, recreational, and religious activities; and to apply for governmental benefits on their behalf. The authorization was to be effective until the B's "have obtained legal custody" of the children.

At the pretrial conference, DCFS argued that the B's lacked standing to participate in the juvenile court proceedings because they were neither the biological parents nor legal guardians of the children. Judith B. told the court that she had been present to cut the umbilical cord for all four children and that they had lived with her all their lives. The court said that because the B's had assumed responsibility for the children rather than leaving them as orphans, the court would give them legal representation, acknowledging that in doing so, "I may be on shaky legal ground, but I think I'm on strong moral ground." The court advised the B's to file an application to be declared de

facto parents. The juvenile court ordered monitored visitation for the B's and continued the matter to the following month for a contested jurisdictional hearing.

In conjunction with the June 2007 hearings, reports containing further information about the family were submitted to the court. K.B. reported to DCFS that they had been living in the family vehicle since they left Tennessee at the end of the previous December. They all lived in the car with their two dogs. She described the situation as "a little bit sad, but a little bit happy because we had a roof over our heads." They sometimes had baths that consisted of pouring water on themselves outside the car. They could not afford soap. They washed their clothes at laundromats. They did not eat daily due to lack of money. When they needed a bathroom, they used restaurant or park facilities. K.B. stated that Royce B. went to the bathroom in the car and that sometimes in the desert they used a portable toilet that they emptied by the side of the road into a sewer. Occasionally, K.B. reported, Patty went to the bathroom in the car because she failed to report that she needed to do so, and would leave urine and feces in her seat. K.B. also told DCFS that C.B. ate feces and had pinworms, that he ate foam, plastic, and soap as well, and that Judith B. had taken him to the doctor as a result. K.B. said she had seen a doctor a year before and had last been in school three years earlier, both in Tennessee.

Also at this time, both K.B. and C.B. made allegations of abuse to their respective foster caregivers. K.B. reported that Royce B. had molested Patty B. She denied that she had been inappropriately touched. C.B. apparently disclosed to his caregiver that he had been abused by Royce B. DCFS investigated these allegations.

In further interviews, K.B. reported that Royce B. had hit her in the head with a two-by-four piece of wood when she tried to protect Judith B. She alleged that Royce B. had broken Judith B.'s clavicle, that she was there, and that he was violent to everyone. K.B. claimed that Royce B. hit her and her siblings for no apparent reason. "She explained by providing the following example: She stated that if they are playing a game and Royce does not understand how to play 'he gets all mad and he starts hitting.' The [Dependency Investigator] asked what he uses to hit them with. K[B.] replied, 'his fists,

his pocketknife, anything he can reach.’ She then showed the [Dependency Investigator] her arms which have light-colored lines and other markings of various shades. They are possibly scars. She stated that Royce had caused them. She stated that once Judith told her she could go to a friend’s house, but Royce stated no. ‘He got mad and he started cutting me with a knife and a piece of glass.’ She then showed the [Dependency Investigator] a scar on her right hand that can be seen on the backside and the palm. While showing the [Dependency Investigator] her hand she remarked, ‘that’s how I got this.’ She stated that Royce stabbed her with a screwdriver.” According to K.B., when that happened, Judith yelled at him not to hurt her.

K.B. also reported that Royce B. hit her brothers. She said that Royce had knocked J.B. unconscious by hitting his head against a wall and that J.B. had to be rushed to the hospital. She said that the time that Royce B. broke Judith B.’s clavicle when she found out that Royce B. had raped Patty B. According to K.B., Judith had told K.B. that one day she came home and found blood all over the place and Patty B. blind and paralyzed. Judith B. told Patty B. to tell an aunt what had happened to her, and Patty B. pointed at her vagina and cried. K.B. asserted that testing had been done that demonstrated that she had been raped. K.B. said that Judith B. told Royce B. that if he touched the children or Patty B. again, she would call the police, and he had not touched them since. She reported that this had occurred the previous year.

C.B., who had a speech impediment, was described in June 2007 as appearing “to hold a great deal of anger over the experiences he endured with his family. He did not display any aggression, but reported thoughts of wanting to harm others that have harmed him or harmed someone he cared about. He also appears saddened by those same experiences.” He reported that the family had been living in the car since September and that he had to sleep on the floor of the van without a blanket. He stated that he did not always get to eat and that once he was punished for breaking something by not being permitted to eat for a week. He reported that Royce B. “put his finger in my butt” and told him it feels good. C.B. also declared that Susan B., who is the adult daughter of the B’s and a nurse, had touched him. DCFS reported, “When asked about this he stated, ‘I

don't even want to talk about it.' He added that he wants to 'kick her butt' and 'hunt her down and kill her.' He blames Susan for causing Judith's stroke. He stated that she stuck a needle in Judith. He stated that he told Judith about this. And, he stated that Susan told him that she was going to take him away and kill him. C[B.] also reported that Royce paid Susan \$3000 'to kill' Judith. As to why he did this the child stated, 'He was jealous because she had a brand new truck. He was stuck with a bike.'" C.B. stated that Susan touched his private area with her hands and told him she was checking him for worms. According to C.B., Susan knew that he had gotten rid of the worms the year before.

T.B. reported that no inappropriate touching had happened to him and that he was not aware of anything happening to his siblings.

Judith B. denied that the children were sexually abused. She had counseled them to report if they were ever touched inappropriately. As to why C.B. would report abuse, Judith B. stated that she did not know but that C.B. had once lied about a former teacher. He had reported that she touched his "pee pee" with her cell phone. Judith B. reported that C.B. had later admitted to lying because he was not invited to a party she had held for her class at her mother-in-law's home. Royce B., too, denied any sexual abuse. Royce B. denied that he had ever touched any child. Royce B. said that C.B. has been known to get angry at him when Judith B. disciplines him because C.B. does not know where to place his anger; he did not, however, know why C.B. would report abuse.

As of June 2007, K.B. liked her foster home and wanted to remain there until she could return to the B's. J.B. was doing well in his placement. C.B. was playing with and hiding his feces and the foster caregiver had requested he be transferred. T.B. believed the children were wrongfully taken from the B's.

In July 2007, K.B.'s foster mother reported that K.B. "fib[bed] a lot" and had recently kissed a seven-year-old boy on the mouth. K.B. also reported having been molested while in a group home in Nevada and later said that she had been molested by a family member. K.B. had also "stated such things as she has had sex with demons[,] adding that it was 'only the cute ones.' She reported having sex with her mother's

boyfriends and orally copulating a school principal.” A counseling referral for K.B. was pending.

In July 2007 the children were declared dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b)³ on the basis that Lori T. had made an inappropriate plan for the children’s care and supervision by placing them in the custody of the B’s, who caused the children to reside in an unsanitary vehicle, had not ensured their attendance at school, and had allowed them to go hungry. At disposition, the court ordered no reunification services pursuant to section 361.5, subdivision (b)(1) because the location of the biological parents was unknown. The court set the date for section 366.21, subdivision (e) and 366.26 hearings as January 22, 2008.

III. Late 2007-Early 2008

In November 2007, Judith B. and Royce B. filed a motion seeking presumed parent status, reunification services, and a continuance of the section 366.26 hearing scheduled for the following January. The court continued the section 366.26 hearing and set a hearing on the presumed parent motion for January 30, 2008. The following month, the B’s filed a motion to be appointed the children’s de facto parents.

At a December 2007 progress hearing, DCFS argued that the B’s were not entitled to counsel, that the court should rescind its order granting counsel, and that the B’s had no right to be present during the dependency proceedings. The court made orders for holiday visitation with the B’s and observed that the issue of parental status and representation would be handled the following month. Later that same day, however, the court re-called the matter without appearances by the parties, and stated for the record, “The Court, in reviewing the file and the appropriate case law, finds that since Judith and

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Royce B[.] are not legal guardians, that the appointment of counsel was inappropriate. [¶] The court at this time is relieving [counsel for the B's,] Mr. Grossman."

In a report prepared for the January 2008 hearing, K.B.'s caregiver described K.B. as a habitual liar. She lied about her whereabouts most of the time and frequently was untruthful about simple things. K.B. had recently thought that she might be pregnant. She admitted that she had sex at school and reported that she had done so because she thought it might be fun. It was reported that K.B. had some good visits with the B's but that she had refused a Christmas visit. At one visit, Judith B. told K.B. that she was acting like a "bitch" and that she was "talking like a Black person." J.B. had refused a number of visits and telephone calls, but had also had some visits and calls with them that went well. C.B.'s calls were reported to have gone well. K.B. was willing to return to the B's because she did not like foster care; J.B. and T.B. did not want to go back to the B's; and C.B. was not very clear and wavered in his feelings about returning to their care.

A placement with Susan B. was considered in January 2008 and a pre-release investigation report was completed. Susan lived next door to her parents, the B's. J.B. and T.B. did not want to return to the home of the B's or to live with Susan B., repeatedly stating their preference to remain with their foster mother. J.B. said, "[I]f I was to return home I would be back to living in the van." K.B.'s wishes were more unclear. DCFS reported that on December 24, 2007, K.B. said that she did not want to go to the home of Judith B. and Royce B. She then changed her mind on several occasions about the homes of both Susan B. and the B's. In a January 28, 2008 phone interview, Judith B. could be heard in the background urging K.B. to report that she wanted to go to Susan B.'s home. C.B. continued to vacillate about whether he wanted to be in Judith and Royce B.'s home.

On January 30, 2008, the court heard both the presumed parent and de facto parent motions simultaneously. Although the court reminded counsel for the B's that he had been relieved, the court permitted him to argue the motions nonetheless. The court then denied the motions, stating that "[m]y finding that they don't have de facto parent status does not prevent them from considering other options. But in this court, based upon the

sustained petition, the court is not going to grant the motion.” The court refused to permit an evidentiary hearing and clarified that it was denying the B’s both de facto parent status and presumed parent status. The B’s, K.B., and C.B. appealed.

In March 2008 the B’s filed a section 388 petition requesting that the court grant presumed parent and de facto status to them, vacate the order setting the section 366.26 hearing, and provide family reunification services. The court denied the petition without a hearing. The appeal from the denial of the section 388 petition is the subject of a separate pending appeal decided concurrently with this matter. (*In re K.B., et al.*, B208002.) As of June 26, 2008, the permanent plan for J.B. and T.B. was for them to remain in long-term foster care with their foster parent; the permanent plan for C.B. was to remain in his present placement; and the permanent plan for K.B. had not been determined.

DISCUSSION

I. Presumed Parent Status

A person may be presumed to be the natural parent of a child if he or she receives the child into his or her home and openly holds the child out as his or her natural child. (Fam. Code, § 7611, subd. (d) [presumed father]; *In re Karen C.* (2002) 101 Cal.App.4th 932, 938 [presumed mother].) Presumptive parent-child relationships, regardless of their lack of foundation in biology, are protected because society has an interest in preserving and protecting the developed parent-child relationships that give children social and emotional strength and stability. (*Steven W. v. Matthew S.* (1995) 33 Cal.App.4th 1108, 1116.)

In connection with their motion to be declared the presumed parents of the four children, the B’s submitted evidence via declaration of the following: they have raised the four children since they were born, though they are not biologically related; the children call them “mom” and “dad” and consider them to be their parents; they obtained

identification cards for the children with their last name; and three of the four children were given their last name, with the fourth child having an invented surname. The B's explained that the children's biological mother, Lori T., was a prostitute and drug addict who was not related to them but whom they permitted to stay with them. Lori first came to stay with the B's soon after K.B., the oldest child, was born; the other children were born while Lori lived with the B's. Lori "brought them back home to us from the hospital to take care of after they were born and we took them in and treated them like our own children," the B's reported.

The B's have enrolled the children in school. They asserted that they had believed that the legal papers Lori completed made them the children's legal guardians. The B's stated that they lost touch with Lori after she moved to Nevada in 1998 and they believed that she died in 2004. The fathers of the children are unknown, but the B's believed that their deceased adopted son might have fathered J.B.

The B's reported that they had cured the problem that led to the children's detention in the first place, as they had rented two adjoining two-bedroom apartments and maintained them in a sanitary manner. To support their assertion that they had remedied the housing and sanitation problems that led to DCFS intervention, the B's also provided a declaration by an investigator who had inspected the apartments. She reported that the apartments were clean, neat, and safe, appropriately furnished and stocked. The B's had enrolled in a parenting class to improve their parenting skills with respect to strong-willed or out-of-control children, and they continued to visit the children as much as they were allowed. They told the court that the four children "are brothers and sister. They love each other and want to be together. We love our children and they love us and we all want to be together as a family."

DCFS opposed the motion on the ground that the court should not subvert the presumed parent mechanism to recognize a non-legal adoption. It argued that the B's were no more presumptive parents than would be a foster parent, relative, or babysitter who cared for the children for a period of time. Moreover, DCFS exhorted the court not

to permit the B's to be presumed parents "so that they can continue their career of malefaction."

As noted above, the juvenile court denied the motion for presumed parent status. Our appellate review is limited to determining whether there is any substantial evidence, contradicted or uncontradicted, that will support the conclusion reached by the juvenile court. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.) Here, substantial evidence supports the juvenile court's ruling.

While the juvenile court did not specify the precise basis for its ruling, we uphold its determination on the basis that the court could properly have found that Judith B. did not meet her burden of showing that she had openly held out the children as her natural children. Beyond the shared surname and a certificate entitled "parent volunteer award" given by a school to Judith B., there was little evidence before the court that Judith B. had presented herself as the natural parent of the children prior to the dependency proceedings rather than as their guardian,⁴ and she certainly did not do so in the course of the dependency matter. The children knew and openly discussed that the B's were not their parents. As early as the filing of the detention report of May 2007, DCFS knew that the B's were not the biological parents of the children; they knew the children's birth mother's name and that the children's biological fathers were unknown. Judith B. told the investigator that she was the children's guardian; reported the name of the children's biological mother; disclosed that the children's biological fathers were unknown with the exception of J.B., whom she believed to have been fathered by her son; and said that she had cared for the children all their lives. Royce B. did not maintain the fiction that he or Judith B. was the natural parent of the children: he told the police that he was the legal guardian of his four "grandchildren." Moreover, a family friend interviewed by DCFS had known the B's for three years; it did not appear that Judith B. had held herself out as

⁴ Items such as report cards that are addressed to the "parent or guardian" of a child and signed by one of the B's on the sole signature line do not establish that Judith B. was holding herself out as a parent as opposed to a guardian.

the mother of the children to him, because he reported that “Judith has been caring for [the] children a long time and apparently three of the children are from a mother that she got off the street to try and help. The other boy, J[.] is her biological grandson.” The children’s counsel told the juvenile court in June 2007 that the children called the B’s their parents but “they know they have a biological mother.” This evidence supports the juvenile court’s conclusion that Judith B. was not the presumed mother of the four children, and on these facts we cannot say that no reasonable court could have determined that she was not a presumed parent.

This case is not similar to *In re Salvador M.* (2003) 111 Cal.App.4th 1353, contrary to K.B. and C.B.’s claim. In *In re Salvador M.*, the child’s older sister had acted as the child’s mother from the child’s birth, even breastfeeding him. (*Id.* at p. 1355.) In *Salvador M.*, it was well-established that the sister was in fact a presumed parent. As the court explained, there was “compelling evidence that appellant held Salvador out as her son—i.e., the fact that eight-year-old Salvador *believed* appellant was his mother. At his age, Salvador would not still believe appellant was his mother unless she so represented herself. Though appellant’s family knew she was not his biological mother, we can reasonably infer from this record that family members went along with the fiction, at least in front of Salvador. Otherwise, Salvador would know or at least suspect that appellant was not his mother. Yet, the fact that Salvador believed appellant was his mother is not disputed in this case. Therefore, for Salvador to hold on to that belief for so long must mean that appellant held Salvador out to the community as her son.” (*Id.* at p. 1358.)

K.B. and C.B. claim that the cases are the same because they too believed Judith B. was their parent. This assertion is belied by the record with respect to K.B., who was very clear that Judith B. was not her mother and gave DCFS substantial information about her mother as early as June 2007. K.B. stated that she called Judith her mom. We have found no evidence in the record that C.B. believed Judith B. to be his mother, and the children’s brief identifies none to support that contention. Indeed, in the children’s reply brief, immediately after asserting that they believed the B’s to be their parents, they

acknowledge that they “may have been told they had a different biological mother and father and in fact met their biological mother.” Unlike the circumstances in *In re Salvador M.*, *supra*, 111 Cal.App.4th 1353, here there was no evidence that the children were held out to the world as Judith B.’s children. Substantial evidence supports the juvenile court’s denial of presumed parent status.

Judith B., K.B. and C.B. all argue that public policy demands that Judith B. be recognized as the children’s presumptive parent. We disagree. We do not wish to minimize the relationships between Judith B. and the children, but public policy does not compel us to recognize relationships of affinity where the facts presented do not merit a ruling that a caregiver is a presumed parent; nor does the fact that these children, tragically, have lacked parents or presumed parents compel the courts to accept as a presumed parent an individual who has come the closest to filling parental shoes.

The parties devote considerable attention to the question of whether the presumption of paternity or maternity was rebutted here by disclosures made by the B’s, by the conduct that led to the dependency jurisdiction, by the alleged abuse, or by other circumstances of this case. Our conclusion that substantial evidence supports the court’s determination that Judith B. was not a presumed parent obviates the need to consider whether any presumption of parenthood was properly rebutted. This conclusion similarly moots K.B. and C.B.’s arguments that Judith B. should have been given reunification services under section 361.5 because she was a presumed parent.

II. Children’s Constitutional Arguments

K.B. and C.B., joined by Judith B., argue that they have a constitutionally protected right to a child-parent relationship with Judith B. because they know her as their mother, share the same surname, and have a family bond. They further argue that the order denying presumed parent status must be reversed “as it does not serve any purpose other than to deprive K[.] and C[.] of a chance at reunifying with the only parents they have ever known.” K.B. and C.B. rely on a variety of general statements as to

children's constitutional rights, including the observation in *In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1505, superseded by statute as stated in *In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1311-1312, that the interests in familial ties that grow between members of a de facto family may, in some circumstances, outweigh biological relationships.

The children's constitutional argument is premised on the view that the denial of presumed parent status was erroneous, and they argue that the impact of that error was of constitutional dimension because it interfered with their relationship with the only parental caregivers they have ever known. K.B. and C.B., however, have not established error in the denial of presumed parent status to Judith B. The juvenile court determined that Judith B. did not qualify as a presumed mother, and substantial evidence supports that ruling.

III. De Facto Parent Status

A de facto person is "a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period." (Cal. Rules of Court, rule 5.502(10).) Appointment as a de facto parent gives the appointee standing to participate as a party in hearings at which the status of the child is at issue. (Cal. Rules of Court, rule 5.534(e).) As the purpose of de facto parent status is to ensure that all legitimate views, evidence and interests are considered in all dispositional proceedings involving a dependent minor (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 256), in deciding whether to appoint a person as a de facto parent the juvenile court "should consider the applicant's adherence to the role of a parent and whether he or she has information that would be helpful to the court in making its placement orders." (*Ibid.*) Specifically, the juvenile court should consider whether the child is bonded to the adult; whether the child has assumed the role of a parent on a day-to-day basis for a substantial period of time; whether the adult possesses information

about the child unique from the other adults in the process; whether the adult has regularly attended the juvenile court hearings; and whether a future proceeding may result in an order permanently foreclosing any further contact with the adult. (*Ibid.*)

Here, there is no question that Judith B. possessed many characteristics of a de facto parent. She was bonded with the children; she had cared for them since birth and possessed information about them that other participants would not possess; she attended hearings regularly; and the juvenile court's determination presented the possibility of foreclosing custody, if not all contact, with her. That is not, however, the entirety of the de facto parent analysis. "An applicant who otherwise qualifies as a de facto parent may be denied that status by acting in a manner fundamentally inconsistent with the role of a parent. [Citation.] An applicant who substantially harms a child, causing that child's dependency, is automatically disqualified." (*In re Merrick V.*, *supra*, 122 Cal.App.4th at p. 257.) While de facto parent status is automatically forfeited by a caretaker's physical or sexual abuse of a child (see, e.g., *In re Kieshia E.* (1993) 6 Cal.4th 68, 77-78), a court may also deny de facto parent status based on less extreme conduct. As the court explained in *In re Merrick V.*, "an applicant's misconduct is relevant in determining de facto parent status to the extent the misconduct caused the child's dependency." (*In re Merrick V.*, at p. 257.) There, the disqualifying behavior was more neglectful than deliberately abusive, but the court nonetheless upheld the denial of de facto parent status. (*Id.* at pp. 257-258.)

The juvenile court denied the B's de facto parent status on the basis of the sustained dependency petition. We review this determination for an abuse of discretion. (*In re Merrick V.*, *supra*, at p. 256.) In most cases, there is no abuse of discretion if substantial evidence supports the juvenile court's decision. (*In re Michael R.* (1998) 67 Cal.App.4th 150, 156.) Here, we cannot say that the juvenile court abused its discretion. When a caretaker fails to adequately fulfill the parenting role he or she has assumed, the court may deny de facto parent status. In *In re Jacob E.* (2004) 121 Cal.App.4th 909, 920, the court explained, "While Jacob lived with Anna for a long period of time, she did not show that she adequately assumed the role of parent on a day-to-day basis, fulfilling

his physical and psychological needs. Rather, though the record shows that Jacob and Anna had a close and loving relationship, it also shows that Anna neglected parental responsibilities, chief among them her failure to enroll Jacob in kindergarten, to schedule medical and dental appointments, and to ensure that Jacob maintain a relationship with his disabled older brother. . . . After Jacob was removed from Anna’s care, he revealed she would hit him with a stick, and that he had witnessed domestic violence. Under these circumstances, Anna acted contrary to the role of a parent.”

Here, just as in *In re Jacob E.*, *supra*, 121 Cal.App.4th at page 921, the juvenile court could reasonably conclude that Judith B.’s “recent care of [the children] was inadequate and fundamentally at odds with the role of a parent.” The juvenile court had sustained the allegations of the petition as follows: “The B[']s caused the children to reside in an unsanitary vehicle that was littered with feces [and] trash and emitted a foul odor. The children had not attended school in over one month. The children had not been fed for days and were hungry.” We cannot say that on this record the juvenile court abused its discretion in denying de facto parent status.

IV. Removal of Counsel

Judith B., joined by K.B. and C.B., contend that the court erred when it removed Judith B.’s appointed counsel outside their presence and without notice. They rely on section 317, California Rules of Court, rule 5.534(g) and (h), *In re Jacob E.*, *supra*, 121 Cal.App.4th 909, and *Janet O. v. Superior Court* (1996) 42 Cal.App.4th 1058, 1066. This argument appears to be premised on the B’s being either presumed parents or de facto parents, as none of the authorities on which Judith B. relies provide for the appointment of counsel for people who have not been determined to be parents or guardians of dependent children. (§ 317 [providing for appointment of counsel to parents, guardians, and children]; Cal. Rules of Court, rule 5.534(g) [court must advise self-represented child, parent, or guardian of the right to be represented by counsel]; Cal. Rules of Court, rule 5.534(h)(1) [providing for appointments of counsel for dependent

children and for their parents or guardians]; *In re Jacob E.*, at p. 924 [court had no authority to appoint counsel for person who was not a parent, guardian, or de facto parent]; *In re Janet O.*, at pp. 1066-1067 [counsel for biological mother and alleged father may not be removed without noticed hearing]; see also Cal. Rules of Court, rule 5.534(e) [de facto parents may be represented by counsel and the court has the discretion to appoint counsel].) At the time that the court relieved counsel, Judith B. was not the children's guardian and she had not been declared their presumed or de facto parent. Appellants have not identified any legal authority that would entitle Judith B. to representation at that stage in the proceedings. Denying her counsel did not contravene any of the authorities cited by appellants.

Judith B. argues that it was fundamentally unfair to relieve counsel without permitting her to be present and to offer evidence. While we cannot say that relieving counsel with a brief statement on the record in what appears to have been the absence of all parties involved in the matter was an appropriate way to proceed, we cannot identify any manner in which Judith B. was injured by the court's action. Despite having been relieved as counsel, the attorney who had been representing the B's was subsequently permitted to argue the presumed parent and de facto parent motions as pro bono counsel when the court heard them on January 30, 2008. Therefore, it is simply not true as a practical matter that Judith B. was "left . . . without legal representation at their pending hearings." While counsel was relieved, in light of the court's decision to permit counsel to argue the pending motions, any error in relieving counsel in the manner selected by the court was harmless under any standard.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.